

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

SEMCON IP INC.,

Plaintiff,

v.

AMAZON.COM, INC.,

Defendant.

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CIVIL ACTION NO. 2:18-CV-00192-JRG

ORDER

Before the Court is Plaintiff Semcon IP Inc.’s (“Semcon”) Unopposed Motion for Leave (the “Motion”). (Dkt. No. 167.) Semcon seeks leave to replace its testifying technical expert, Dr. Jamie Carbonell, with Mr. Joseph McAlexander because Dr. Carbonell has a significant medical condition necessitating his replacement. Semcon and Defendant Amazon.com, Inc. (“Amazon”) (together the “Parties”) have conferred and Amazon does not oppose the Motion.

Furthermore, the Parties have represented the following stipulations that the Court expressly relies on in granting the Motion. *See Gabarick v. Laurin Mar. (Am.) Inc.*, 753 F.3d 550, 553 (5th Cir. 2014) (citing *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001)) (noting that parties will be judicially estopped from contradicting representations made to—and relied upon by—a court). Those stipulations are:

1. Mr. Joseph McAlexander shall serve as a substitute expert in lieu of Dr. Jaime Carbonell;
2. Mr. McAlexander will adopt in their entirety Dr. Carbonell’s July 2, 2019 opening expert report regarding infringement, July 23, 2019 rebuttal expert report regarding

- validity, and the August 3, 2019 Deposition of Dr. Carbonell (collectively, “Dr. Carbonell’s Expert Testimony”). Mr. McAlexander will not offer opinions that go beyond the parameters and scope of Dr. Carbonell’s Expert Testimony. Mr. McAlexander shall be a replacement for Dr. Carbonell, not an additional expert witness;
3. Given that Mr. McAlexander will adopt Dr. Carbonell’s Expert Testimony, Amazon shall not, either at deposition or at trial, inquire as to how Mr. McAlexander would or could have done things differently;
 4. Mr. McAlexander shall be presented as a live witness in Semcon’s case-in-chief at trial and may be examined by Semcon regarding the opinions set forth in Dr. Carbonell’s Expert Testimony;
 5. During trial, Amazon may, where appropriate, attempt to impeach Mr. McAlexander using the deposition of Dr. Carbonell;
 6. Amazon is prohibited from presenting testimony from Dr. Carbonell’s deposition in its case-in-chief at trial, as Mr. McAlexander will be both present and available at trial;
 7. All of Amazon’s *Daubert* objections as to Dr. Carbonell are preserved for appeal without limitation;
 8. Nothing in this Order precludes Semcon from seeking leave to serve a supplemental expert report by Mr. McAlexander addressed to the Amazon products containing NXP/Freescale System-on-Chips; and
 9. The Court will provide an informative instruction to the jury explaining Mr. McAlexander’s role as a substitute for Dr. Carbonell at the time he is called as a witness.

Having considered the Motion and the good cause shown therein, the Court is of the opinion that the Motion should be and hereby is **GRANTED**. It is **ORDERED** that Semcon is

permitted to substitute Mr. Joseph McAlexander for Dr. Jamie Carbonell in the manner requested herein.

So ORDERED and SIGNED this 20th day of September, 2019.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE